APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

UNITED STATES OF AMERICA
VS.
CHARLES BELAND Et Al

No. 7077
No. 7484
No. 7485
No. 7486

AFFIDAVIT OF PERSONAL PREJUDICE AND BIAS OF JUDGE

Now comes Charles Beland, sometimes referred to as Charley Beland, defendant in the above numbered causes, and avers and on oath says that the Honorable T. Whitfield Davidson, United States District Judge in and for the United States District Court, Fort Worth Division, of the Northern District of Texas, the judge before whom these actions and proceedings are to be tried, has a personal bias and prejudice against him. For a statement of the facts and reasons for the belief on the part of the said defendant that such bias and personal prejudice against him on the part of the said Honorable T. Whitfield Davidson, the judge before whom these actions and proceedings are to be tried, exists, defendant avers the following:

(1) Prior to the defendant being indicted in cause No. 7077, sometime during March, 1938, an informer, one Ardell Savage, acting under the direction of one W. H. Crook, Chief Narcotic Inspector in Fort Worth, Texas, informed defendant that she had gathered numerous reports covering alleged violations of the Harrison Anti-Narcotic Act, attributed to divers persons including members of the defendant's family and the defendant and, that she, in company with the said W. H. Crook, Mr. Shifflet, a police officer of the City of Fort Worth, and Clyde O. Eastus, United States Attorney, Mr. Barnett, a Narcotic Inspector, and Mr. Robinson, a Narcotic Inspector, had, on several occasions discussed the ramifications of the case as then being prepared against the hereinbefore mentioned defendants and this defendant, and that on one occasion, she Ardell Savage, in company with either all of the parties mentioned hereinabove, associated together in the preparation of the case against the defendants and this defendant, or some of the parties mentioned heretofore who were then in the employ of the United States and preparing the cases, discussed together with the said Honorable T. Whitfield Davidson, including the informer, Ardell Savage, the punishment that would be assessed upon a conviction of these several defendants, and this defendant particularly, the exact number of years to be assessed against Charles (Charley) Beland, twenty-five years imprisonment in a United States Penitentiary, with especial emphasis having been stated that Charles (Charley) Beland would be confined to Alcatraz Prison; and, that other conversations relating to the

then pending and prepared case against the defendant's family and himself covered other phases which she, the informer, Ardell Savage, could not remember.

(2) That upon so being informed by the informer, Ardell Savage, as to what had been discussed by the said employees of the United States, and the said Honorable T. Whitfield Davidson, concerning the case generally and the possible terms of sentence that might eventuate, that the defendant's family, availed themselves of the remedy at law, namely, by the filing of an affidavit of personal bias and prejudice against the said Honorable T. Whitfield Davidson, which was duly passed upon and wherein the said Honorable T. Whitfield Davidson recused himself from presiding upon the trial of the persons charged in this case, namely, defendant's family, excepting himself, the defendant not having been in the jurisdiction of the Court at the time, and that such proceedings as were had then were before the Honorable James C. Wilson, United States District Judge, at Fort Worth, Texas.

(3) That subsequent to the filing of the said affidavit of personal bias and prejudice during the March term, 1938, considerable publicity developed from the filing of the said affidavit, and counsel then representing the defendant, and defendant's family, was ordered to show cause why he should not be disbarred from the rolls of the said Court, said order being made by the said Honorable T. Whitfield Davidson; resulting in considerable doubt and suspicions being directed against defendant's then employed counsel,

and other retaliatory measures resorted to on the part of agents of the United States in connection with the information supplied defendant's family, and this defendant, by Ardell Savage, the informer employed by the agents of the Narcotic Department to assist and prepare the cases then before the court; and, that the said Honorable T. Whitfield Davidson caused the defendant's former counsel to defend himself against disbarment from the rolls of attorneys practicing in the United States District Court for the Northern District of Texas, on the erroneously conceived idea that defendant's counsel at that time caused, or had aided, the conception of the affidavit of personal bias and prejudice, when in truth and fact the same was all brought about by the information, however factual or not it may have been, relayed and addressed personally on the part of the informer for the United States, Ardell Savage, to the defendant and his family and other defendants charged in that cause, and which information brought forth within each of the defendants minds, and this defendant, a mental fear of being tried before the Honorable T. Whitfield Davidson, and what might be visited upon them in the form of punishment should a conviction result.

(4) This defendant avers that such a fear as to the impartiality and fairness of the said T. Whitfield Davidson, as a Judge of the United States District Court, to try any case wherein this defendant is accused of an offense against the United States, is a fear that has not been displaced by any of the events or proceedings subsequent to the filing of the original affidavit of personal bias and prejudice during the

March term, 1938; but, on the contrary, such fear is aggravated by other circumstances, wherein the said T. Whitfield Davidson, Presiding in other cases wherein similar offenses were charged against other defendants, has imposed sentences that are harsh, cruel, and excessive, as was the result in a case known as United States versus Ginsberg, et al, where sentences as long as 52 years was imposed by the said T. Whitfield Davidson, upon a defendant over 50 years of age, such a punishment being a sentence far more aggravated than a life sentence; and, that such a result as obtained in the Ginsberg case, which was tried before the Honorable T. Whitfield Davidson prior to the return of an indictment against this defendant, together with the information supplied him and others by Ardell Savage, could have had but reception within this defendant's mind, and still exists as a live fear as to what might be visited upon him in the form of punishment should a conviction result before a court presided over by the Honorable T. Whitfield Davidson.

(5) This defendant avers that subsequent to the disposition of the disbarment proceedings against defendant's then employed counsel, this defendant came within the jurisdiction of this Honorable Court, and successive delays were had in connection with the trial of this cause, No. 7077; and, that latterly, the Honorable T. Whitfield Davidson had occasion to pass the said cause to the court presided over by the Honorable James C. Wilson, senior District Judge for the Northern District of Texas; and, that up to the filing of this affidavit of personal bias and prejudice against

the Honorable T. Whitfield Davidson, there had been no submission of this defendant to the jurisdiction of the court presided over by the Honorable T. Whitfield Davidson up to the present time, he having been absent at the time of the filing of the affidavit of personal bias and prejudice, which occurred during the March term, 1938, and which affidavit was then filed by defendant's mother, Lucy Beland, his brother, Joe Beland, and his sister-in-law, Jacqueline Beland, and acted upon as hereinbefore recited.

(6) That this affidavit of personal bias and prejudice against the Honorable T. Whitfield Davidson is not made for the purposes of delaying any proceeding wherein this defendant may be named defendant, but is filed in good faith and by virtue of the ever present fears that resides within his mind concerning the fitness, fairness, and partiality of the said T. Whitfield Davidson to preside in any case wherein this defendant is named as a defendant; and further, that by virtue of the measures resorted to by the said T. Whitfield Davidson in causing proceedings to be instituted against counsel formerly employed by him, evidences a frivolousness of judicial conduct, and an intent to visit upon others punishment not fairly or legally due to be visited upon anyone, especially counsel who was acting in good faith and attempting to protect the interests of his clients at that time; and this defendant is of the belief, and the feeling, that however the Honorable T. Whitfield Davidson may, or may not condone the acts of others especially those who might unfortunately be charged with offenses against the United States, that his particular

attitude, judicially, against persons charged with violations of the Harrison Anti-Narcotic Act has been intemperate, unfair, and hardly in keeping with judicial mercy and temperateness as demonstrated by him not only in the Ginsberg case, but in other cases where similar violations of the law were tried, and by his expressions from the bench during the proceedings wherein such cases were tried by him; and, by virtue of natural causes and natural feelings that normally ensue, illustrated by the said T. Whitfield Davidson's actions against defendant's former counsel, and the present wide publicity covering the cases wherein defendant is now charged with offenses against the United States, and these offenses being alleged violations of the Harrison Anti-Narcotic Act and alleged conspiracies, that all of these facts are still resident and secure within the mind of the said T. Whitfield Davidson, as would ordinarily prejudice him against this defendant should defendant be tried before the Honorable T. Whitfield Davidson.

That this affidavit is filed ten days before the date certain set for the trial of these causes, namely, June 20th, A. D. 1940, covering the filing of this affidavit of personal bias and prejudice, and the date certain set for trial being July 1st, A. D. 1940.

Wherefore, this defendant prays that another Judge shall be designated in the manner prescribed in Section 24, of Title 28, or Section 27 of said Title 28, United States Code (Judicial Code Section 23).

CHARLES CHARLEY BELAND
Charles (Charley) Beland,
In Propria Persona.

Subscribed and sworn to by Charles (Charley) Beland, this 20th day of June, A. D. 1940.

BENNIE VALLIANT
Notary Public in and for Tarrant
(Seal) County, Texas

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION,

FORT WORTH, TEXAS.

UNITED STATES OF AMERICA
VS.
LOUIS SHERMAN, et al

No. 7077
No. 7484
No. 7485 Criminal
No. 7486

MOTION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

CHARLEY BELAND, one of the defendants in the above styled and numbered cases, respectfully shows to the Court as follows:

That heretofore, on or about the 20th day of June, A. D. 1940, which was more than ten days before the

trial date for which any of the above cases had been set, this defendant on his own behalf delivered to the Clerk of this Court for filing a motion to disqualify the Honorable T. W. Davidson, before whom the above cases had been set down for trial, said motion being in the nature of an affidavit of personal bias and prejudice, to which motion and affidavit reference is here made for all purposes.

This defendant says that the above motion and affidavit was prepared by defendant personally; that at the time of filing said motion and affidavit defendant was without benefit of legal counsel by virtue of the fact that defendant's attorney who had been retained by defendant to represent defendant in these causes had refused to represent defendant in the preparation and filing of the aforesaid motion and affidavit and before the time of the filing of said motion and affidavit, defendant's attorney, to-wit: Harold H. Young, had withdrawn as counsel of record. Defendant shows further that he attempted to procure other counsel to prepare and file said motion and affidavit and also to prepare and file this motion, but has been unable to do so, and is now unable to secure the services of a lawyer to represent the defendant in any matter connected with the disqualification of the above named judge of this Court.

Defendant says that he followed the provisions of the statute governing the filing of such a motion and affidavit as was presented to the Clerk for filing in this case, except that the said motion and affidavit was of course not certified by defendant's attorney of record in the cause, for the reason that defendant

did not, at said time, have an attorney of record in said cause and was unable to procure the services of an attorney to handle the matter for him, or to prepare this motion.

Defendant says that several days after the above motion and affidavit was presented to the Clerk for filing, the defendant was informed by the Clerk of this Court that Clyde O. Eastus, United States Attorney for this district, had ordered the Clerk not to file the motion and affidavit, assigning as his reason the fact that the motion and affidavit was not certified to by an attorney of record in accordance with the statute.

Defendant says that the above motion and affidavit was prepared and offered for filing by defendant in good faith, and not for the purpose of delaying the trial of the case; that the facts stated in the motion and affidavit are believed by him to be true, and that said motion should be permitted to be filed and recorded among the papers in this cause, and disposed of as provided by the statute.

In the preparation and filing of the motion and affidavit and in the presentation of this motion, defendant does not mean or intend any disrespect whatsoever to this Honorable Court, but is attempting merely to be granted the rights and privileges accorded him under the Constitution and laws of the United States.

Therefore, this defendant, who files this motion personally and in his own behalf, respectfully asks this Court to order the Clerk to allow the above motion

and affidavit to be filed as of the date the same was presented for filing, to wit: June 20th, 1940, and further asks this Court to hear said motion and affidavit and dispose of the same in accordance with law, before this defendant is required to enter his plea to the indictment in any of the above cases.

Respectfully submitted to this Honorable Court, in open Court, this the 28th day of June, A. D. 1940, the date set for arraignment in the above cause, and before this defendant has entered his plea to the indictment.

CHARLIE BELAND

Defendant, and Attorney in his own behalf

(Seal)

THE STATE OF TEXAS }
COUNTY OF TARRANT }

Before me, the undersigned authority, on this day personally appeared CHARLEY BELAND, Defendant in the above entitled and numbered cause, who being by me personally and duly sworn, upon his oath states: That he has read the above and foregoing instrument, and that the matters and facts stated therein are true and correct.

CHARLIE BELAND

Charley Beland, Defendant.

SUBSCRIBED and sworn to before me, a Notary Public, in and for Tarrant County, Texas, this the 28th day of June, A. D. 1940.

(Seal)

CLIFFORD MAYS
Notary Public in and for Tarrant County, Texas.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

I, GEO. W. PARKER, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify that the above and foregoing is a true and correct copy of the Affidavit of Personal Prejudice and Bias, presented for filing June 20, 1940, but not filed because it is not certified to by a lawyer, and of the Motion for Leave to file the affidavit of prejudice and bias, presented in open court on June 28, 1940, but not filed upon instruction of the Court, in Cause No. 7486, The United States of America versus Louis Sherman, et al.

Witness my hand, and the seal of said Court, at Fort Worth, Texas, this 10th day of January, 1941.

GEO. W. PARKER, Clerk,
By: Rive J. McGrew
Deputy.

(Seal)

TRANSCRIPT OF PROCEEDINGS.

Filed January 9, 1941.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

UNITED STATES OF AMERICA
VS.
B. H. SHAEFFER, ET AL

UNITED STATES OF AMERICA
VS.
PHIL CHADWICK, ET AL

UNITED STATES OF AMERICA
VS.
LOUIS SHERMAN, ET AL

Nos. 7484, 7485 and 7486

At Fort Worth, Texas, on June 28, 1940, on setting for hearing of motions in the above cases, the following proceedings were had on motion attempted to be filed by Charles Beland, one of the defendants, before Judge T. Whitfield Davidson:

THE COURT: Is there any other motion?

MR. FONVILLE: Mr. Beland has a motion here. There is no motion before the Court. The motion is to disbar this Judge. That motion, under the law, must be accompanied by a certificate of record, of which there is none here, that it is filed in good faith. No such certificate of counsel appears on the motion

and it has been refused by the Clerk because it does not comply with the law.

THE COURT: Let me look at the motion. (Motion is presented to the Court.)

THE COURT: On the motion before the Court there is an affidavit filed similar to one filed two years ago, and the lawyer that certified to that apologized in open court and retracted it. If there is any other lawyer that wants to certify to it, the Court will give him permission.

MR. SMITH: I would like the record to show I am not representing Mr. Beland on that motion.

MR. FONVILLE: I don't understand double representation. I am sure Mr. Smith didn't have anything to do with the motion, but if he has a lawyer, he has a lawyer for all purposes.

THE COURT: The Court understands Mr. Smith does not appear on this motion and will permit him to decline to appear.

MR. SMITH: However, your Honor, Mr. Beland asked me to ask the Court if he can be heard on the motion.

THE COURT: Tell him he will have to be heard under oath. If you wish to protect your client, it might be your duty to talk to him before he swears.

(Court recessed.)

THE COURT: Does your client desire to proceed?

MR. SMITH: After advising with him, he states

he has some other motion he desires to file, and is going to file that.

THE COURT: The motion is not due any consideration of the Court until it has been certified to by a lawyer as having been filed in good faith. The reason for that is very manifest, because it is a very valuable right to be preserved to defendants where the Court is biased against them, but it was never intended by the law for defendants to use it merely to get a postponement of his case, merely to file it for frivolous matters. In this particular case, the Court doesn't know the defendant and if he ever saw him before this minute he doesn't recall it. Since the defendant doesn't know the Court and the Court doesn't know the defendant, he can't understand how there can be any bias or prejudice existing toward him more than any other person. Whenever an affidavit is filed that is a complete fabrication, and is false from beginning to end, and a man insists upon filing it, he should have the privilege of being heard in Court and be heard before a grand jury, and if he desires to now present that, he may take the witness stand.

MR. BELAND: May I be heard your honor?

THE COURT: Come around.

The witness, CHARLES BELAND, having been first duly sworn, testified as follows:

THE COURT: I think perhaps you ought to have a guardian to save yourself from walking deliberately into making a false swearing in court.

A. Well, your Honor, I will solemnly swear that

every one of these words of this affidavit to be the truth, as far as I know and believe.

THE COURT: I will ask the District Attorney to give the witness now warning how his testimony may be used hereafter, against him.

MR. FONVILLE: Charles Beland, you understand that you are now on trial in the case now before the Court?

A. I do.

Q. Do you understand that you have a constitutional right not to be required to be a witness against yourself?

A. Absolutely.

Q. Do you understand, however, that you may, if you desire, testify at your own request, waiving your constitutional right?

A. That's right.

Q. Do you wish to testify?

A. I do.

Q. Do you request the Court to permit you to testify?

A. I do.

Q. Under oath?

A. Under oath.

Q. You understand that anything you may testify under oath concerning this or any other matter about

which inquiry may be directed to you may be used against you?

A. I do.

Q. Do you also understand, Mr. Beland, that there is a statute against false swearing in the United States District Court under oath?

A. I do.

Q. And that if you commit the crime, that is, if you do swear falsely under oath in this court, you may be taken into custody on a warrant?

A. I do.

MR. SMITH: May it please your Honor, in order to keep the record straight, Mr. Beland didn't tell me he wanted to testify. What he said was, to file some motion.

THE COURT: You might let it show that you do or do not appear for him.

MR. SMITH: No, sir, I don't appear for him at all. I am just telling the Court of my conference with him at recess.

THE COURT: Mr. District Attorney, I will ask you to file, to dictate to the reporter, some contest on this. I don't think it should be heard, or is entitled to be heard, until some lawyer certifies to it, and not having been certified to by any lawyer, and he having a lawyer who does not certify to it, the Court will dismiss the affidavit as the matter now stands.

MR. BELAND: Your Honor, can I take exception to the Court's ruling?

THE COURT: You certainly may.

MR. HOOD: Your Honor, is it permissible for the government to ask Mr. Beland one or two questions?

THE COURT: The Court, either at this time or at some other time desires him interrogated about who prepared the papers.

MR. HOOD: On the face of it, it is a false affidavit. I think Mr. Beland should be taken into custody now for filing a false swearing.

THE COURT: The Court will give proper instructions at the end of the trial. The Court doesn't want him prejudiced.

MR. HOOD: He knows Ardell Savage testified she didn't know what this was.

MR. BELAND: I didn't know anything of the kind.

MR. HOOD: And he knows Alex Mood apologized for it.

MR. BELAND: I haven't conferred with Alex Mood.

THE COURT: May the Court interrogate you briefly? This paper that you attempted to file, but which under the law was not subject to be filed, shows that a lawyer has prepared it and a lawyer made it out. What lawyer prepared this for you?

A. If I am going to later be charged with false

swearing, I am going to refuse to testify, on the ground I might be incriminated.

I, Maidee Hoppee, shorthand reporter, certify that the above and foregoing is a true and correct transcript of the proceedings on the aforementioned motion.

MAIDEE HOPPE
Reporter.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

I, GEO. W. PARKER, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify that the above and foregoing is a true and correct copy of the Transcript of Proceedings had on motion attempted to be filed by Charles Beland on June 28, 1940, the original of which was filed on January 9, 1941, in cause No. 7486, The United States of America versus Louis Sherman, et al, and now remains on file and of record in my office at Fort Worth, Texas.

Witness my hand, and the seal of said Court, at Fort Worth, Texas, this 10th day of January, 1941.

GEO. W. PARKER, Clerk,
By: Rive J. McGrew
Deputy

(SEAL)